

Introduced by Committee on Governmental Organization (Senators Wright (Chair), Calderon, Denham, Florez, Harman, Negrete McLeod, Oropeza, Padilla, Price, Wyland, and Yee)

March 8, 2010

An act to amend Section 326.3 of the Penal Code, relating to gambling.

LEGISLATIVE COUNSEL'S DIGEST

SB 1484, as introduced, Committee on Governmental Organization. Remote caller bingo.

The California Constitution allows the Legislature, by statute, to authorize cities and counties to provide for bingo games for charitable purposes. The California Remote Caller Bingo Act permits cities and counties to allow bingo games and remote caller bingo games, as defined, to be conducted by specified organizations for charitable purposes pursuant to an ordinance that allows those games to be conducted only in accordance with specified requirements, and sets forth a model ordinance to authorize remote caller bingo.

This bill would make a technical, conforming change to the model ordinance.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 326.3 of the Penal Code is amended to
- 2 read:
- 3 326.3. (a) The Legislature finds and declares all of the
- 4 following:

1 (1) Nonprofit organizations provide important and essential
2 educational, philanthropic, and social services to the people of the
3 State of California.

4 (2) One of the great strengths of California is a vibrant nonprofit
5 sector.

6 (3) Nonprofit and philanthropic organizations touch the lives
7 of every Californian through service and employment.

8 (4) Many of these services would not be available if nonprofit
9 organizations did not provide them.

10 (5) There is a need to provide methods of fundraising to
11 nonprofit organizations to enable them to provide these essential
12 services.

13 (6) Historically, many nonprofit organizations have used
14 charitable bingo as one of their key fundraising strategies to
15 promote the mission of the charity.

16 (7) Legislation is needed to provide greater revenues for
17 nonprofit organizations to enable them to fulfill their charitable
18 purposes, and especially to meet their increasing social service
19 obligations.

20 (8) Legislation is also needed to clarify that existing law requires
21 that all charitable bingo must be played using a tangible card and
22 that the only permissible electronic devices to be used by charitable
23 bingo players are card-minding devices.

24 (b) Neither the prohibition on gambling in this chapter nor in
25 Chapter 10 (commencing with Section 330) applies to any remote
26 caller bingo game that is played or conducted in a city, county, or
27 city and county pursuant to an ordinance enacted under Section
28 19 of Article IV of the California Constitution, if the ordinance
29 allows a remote caller bingo game to be played or conducted only
30 in accordance with the requirements of this section, including the
31 following requirements:

32 (1) The game may be conducted only by the following
33 organizations:

34 (A) An organization that is exempted from the payment of the
35 bank and corporation tax by Section 23701a, 23701b, 23701d,
36 23701e, 23701f, 23701g, 23701k, 23701w, or 23701l of the
37 Revenue and Taxation Code.

38 (B) A mobilehome park association.

39 (C) A senior citizens organization.

40 (D) Charitable organizations affiliated with a school district.

(2) The organization conducting the game shall have been incorporated or in existence for three years or more.

(3) The organization conducting the game shall be licensed pursuant to subdivision (l) of Section 326.5.

(4) The receipts of the game shall be used only for charitable purposes. The organization conducting the game shall determine the disbursement of the net receipts of the game.

(5) The operation of bingo may not be the primary purpose for which the organization is organized.

(c) (1) A city, county, or city and county may adopt an ordinance in substantially the following form to authorize remote caller bingo in accordance with the requirements of subdivision (b):

Sec. __.01. Legislative Authorization.

This chapter is adopted pursuant to Section 19 of Article IV of the California Constitution, as implemented by Sections 326.3 and 326.4 of the Penal Code.

Sec. __.02. Remote Caller Bingo Authorized.

Remote Caller Bingo may be lawfully played in the [City, County, or City and County] pursuant to the provisions of Sections 326.3 and 326.4 of the Penal Code, and this chapter, and not otherwise.

Sec. __.03. Qualified Applicants: Applicants for Licensure.

(a) The following organizations are qualified to apply to the License Official for a license to operate a bingo game if the receipts of those games are used only for charitable purposes:

(1) An organization exempt from the payment of the Bank and Corporation Tax by Section 23701, 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701k, or 23701w of the Revenue and Taxation Code.

(2) A mobile home park association of a mobile home park that is situated in the [City, County, or City and County].

(3) Senior citizen organizations.

(4) Charitable organizations affiliated with a school district.

(b) The application shall be in a form prescribed by the License Official and shall be accompanied by a nonrefundable filing fee in an amount determined by resolution of the [Governing Body of the City, County, or City and County] from time to time. The

1 following documentation shall be attached to the application, as
2 applicable:

3 (1) A certificate issued by the Franchise Tax Board certifying
4 that the applicant is exempt from the payment of the Bank and
5 Corporation Tax pursuant to Section 23701d of the Revenue and
6 Taxation Code.

7 (2) Other evidence as the License Official determines is
8 necessary to verify that the applicant is a duly organized mobile
9 home park association of a mobile home park situated in the [City,
10 County, or City and County].

11 Sec. __.04. License Application: Verification.

12 The license shall not be issued until the License Official has
13 verified the facts stated in the application and determined that the
14 applicant is qualified.

15 Sec. __.05. Annual Licenses.

16 A license issued pursuant to this chapter shall be valid until the
17 end of the calendar year, at which time the license shall expire. A
18 new license shall only be obtained upon filing a new application
19 and payment of the license fee. The fact that a license has been
20 issued to an applicant creates no vested right on the part of the
21 licensee to continue to offer bingo for play. The [Governing Body
22 of the City, County, or City and County] expressly reserves the
23 right to amend or repeal this chapter at any time by resolution. If
24 this chapter is repealed, all licenses issued pursuant to this chapter
25 shall cease to be effective for any purpose on the effective date of
26 the repealing resolution.

27 Sec. __.06. Conditions of Licensure.

28 (a) Any license issued pursuant to this chapter shall be subject
29 to the conditions contained in Sections 326.3 and 326.4 of the
30 Penal Code, and each licensee shall comply with the requirements
31 of those provisions.

32 (b) Each license issued pursuant to this chapter shall be subject
33 to the following additional conditions:

34 (1) Bingo games shall not be conducted by any licensee on more
35 than ~~two days~~ *one day* during any week, except that a licensee may
36 hold one additional game, at its election, in each calendar quarter.

37 (2) The licensed organization is responsible for ensuring that
38 the conditions of this chapter and Sections 326.3 and 326.4 of the
39 Penal Code are complied with by the organization and its officers
40 and members. A violation of any one or more of those conditions

1 or provisions shall constitute cause for the revocation of the
2 organization's license. At the request of the organization, the
3 [Governing Body of the City, County, or City and County] shall
4 hold a public hearing before revoking any license issued pursuant
5 to this chapter.

6
7 (2) Nothing in this section shall require a city, county, or city
8 and county to use this model ordinance in order to authorize remote
9 caller bingo.

10 (d) It is a misdemeanor for any person to receive or pay a profit,
11 wage, or salary from any remote caller bingo game, provided that
12 administrative, managerial, technical, financial, and security
13 personnel employed by the organization conducting the bingo
14 game may be paid reasonable fees for services rendered from the
15 revenues of bingo games, as provided in subdivision (m), except
16 that fees paid under those agreements shall not be determined as
17 a percentage of receipts or other revenues from, or be dependant
18 on the outcome of, the game.

19 (e) A violation of subdivision (d) shall be punishable by a fine
20 not to exceed ten thousand dollars (\$10,000), which fine shall be
21 deposited in the general fund of the city, county, or city and county
22 that enacted the ordinance authorizing the remote caller bingo
23 game. A violation of any provision of this section, other than
24 subdivision (d), is a misdemeanor.

25 (f) The city, county, or city and county that enacted the
26 ordinance authorizing the remote caller bingo game, or the Attorney
27 General, may bring an action to enjoin a violation of this section.

28 (g) No minors shall be allowed to participate in any remote
29 caller bingo game.

30 (h) A remote caller bingo game shall not include any site that
31 is not located within this state.

32 (i) An organization authorized to conduct a remote caller bingo
33 game pursuant to subdivision (b) shall conduct the game only on
34 property that is owned or leased by the organization, or the use of
35 which is donated to the organization. Nothing in this subdivision
36 shall be construed to require that the property that is owned or
37 leased by, or the use of which is donated to, the organization be
38 used or leased exclusively by, or donated exclusively to, that
39 organization.

(j) (1) All remote caller bingo games shall be open to the public, not just to the members of the authorized organization.

(2) No more than 750 players may participate in a remote caller bingo game in a single location.

(3) If the Governor of California or the President of the United States declares a state of emergency in response to a natural disaster or other public catastrophe occurring in California, an organization authorized to conduct remote caller bingo games may, while that declaration is in effect, conduct a remote caller bingo game pursuant to this section with more than 750 participants in a single venue if the net proceeds of the game, after deduction of prizes and overhead expenses, are donated to or expended exclusively for the relief of the victims of the disaster or catastrophe, and the organization gives the California Gambling Control Commission at least 10 days' written notice of the intent to conduct that game.

(4) An organization authorized to conduct remote caller bingo games shall provide the commission with at least 30 days' advance written notice of its intent to conduct a remote caller bingo game. That notice shall include all of the following:

(A) The legal name of the organization and the address of record of the agent upon whom legal notice may be served.

(B) The locations of the caller and remote players, whether the property is owned by the organization or donated, and if donated, by whom.

(C) The name of the licensed caller and site manager.

(D) The names of administrative, managerial, technical, financial, and security personnel employed.

(E) The name of the vendor and any person or entity maintaining the equipment used to operate and transmit the game.

(F) The name of the person designated as having a fiduciary responsibility for the game pursuant to paragraph (2) of subdivision (k).

(G) The license numbers of all persons specified in subparagraphs (A) to (F), inclusive, who are required to be licensed.

(H) A copy of the local ordinance for any city, county, or city and county in which the game will be played. The commission shall post the ordinance on its Internet Web site.

(k) (1) A remote caller bingo game shall be operated and staffed only by members of the authorized organization that organized it. Those members shall not receive a profit, wage, or salary from

1 any remote caller bingo game. Only the organization authorized
2 to conduct a remote caller bingo game shall operate that game, or
3 participate in the promotion, supervision, or any other phase of a
4 remote caller bingo game. Subject to the provisions of subdivision
5 (m), this subdivision shall not preclude the employment of
6 administrative, managerial, technical, financial, or security
7 personnel who are not members of the authorized organization at
8 a location participating in the remote caller bingo game by the
9 organization conducting the game. Notwithstanding any other
10 provisions of law, exclusive or other agreements between the
11 authorized organization and other entities or persons to provide
12 services in the administration, management, or conduct of the game
13 shall not be considered a violation of the prohibition against
14 holding a legally cognizable financial interest in the conduct of
15 the remote caller bingo game by persons or entities other than the
16 charitable organization, or other entity authorized to conduct the
17 remote caller bingo games, provided that those persons or entities
18 obtain the gambling licenses, the key employee licenses, or the
19 work permits required by, and otherwise comply with, Chapter 5
20 (commencing with Section 19800) of Division 8 of the Business
21 and Professions Code. Fees to be paid under any such agreements
22 shall be reasonable and shall not be determined as a percentage of
23 receipts or other revenues from, or be dependent on the outcome
24 of, the game.

25 (2) An organization that conducts a remote caller bingo game
26 shall designate a person as having fiduciary responsibility for the
27 game.

28 (l) No individual, corporation, partnership, or other legal entity,
29 except the organization authorized to conduct or participate in a
30 remote caller bingo game, shall hold a legally cognizable financial
31 interest in the conduct of such a game.

32 (m) An organization authorized to conduct a remote caller bingo
33 game pursuant to this section shall not have overhead costs
34 exceeding 20 percent of gross sales, except that the limitations of
35 this section shall not apply to one-time, nonrecurring capital
36 acquisitions. For purposes of this subdivision, “overhead costs”
37 includes, but is not limited to, amounts paid for rent and equipment
38 leasing and the reasonable fees authorized to be paid to
39 administrative, managerial, technical, financial, and security
40 personnel employed by the organization pursuant to subdivision

(d). For the purpose of keeping its overhead costs below 20 percent of gross sales, an authorized organization may elect to deduct all or a portion of the fees paid to financial institutions for the use and processing of credit card sales from the amount of gross revenues awarded for prizes. In that case, the redirected fees for the use and processing of credit card sales shall not be included in “overhead costs” as defined in the California Remote Caller Bingo Act. Additionally, fees paid to financial institutions for the use and processing of credit card sales shall not be deducted from the proceeds retained by the charitable organization.

(n) No person shall be allowed to participate in a remote caller bingo game unless the person is physically present at the time and place where the remote caller bingo game is being conducted. A person shall be deemed to be physically present at the place where the remote caller bingo game is being conducted if he or she is present at any of the locations participating in the remote caller bingo game in accordance with this section.

(o) (1) An organization shall not cosponsor a remote caller bingo game with one or more other organizations unless one of the following is true:

(A) All of the cosponsors are affiliated under the master charter or articles and bylaws of a single organization.

(B) All of the cosponsors are affiliated through an organization described in paragraph (1) of subdivision (b), and have the same Internal Revenue Service activity code.

(2) Notwithstanding paragraph (1), a maximum of 10 unaffiliated organizations described in paragraph (1) of subdivision (b) may enter into an agreement to cosponsor a remote caller game, provided the game shall have not more than 10 locations.

(3) An organization shall not conduct remote caller bingo more than one day per week.

(4) Before sponsoring or operating any game authorized under paragraph (1) or (2), each of the cosponsoring organizations shall have entered into a written agreement, a copy of which shall be provided to the commission, setting forth how the expenses and proceeds of the game are to be allocated among the participating organizations, the bank accounts into which all receipts are to be deposited and from which all prizes are to be paid, and how game records are to be maintained and subjected to annual audit.

(p) The value of prizes awarded during the conduct of any remote caller bingo game shall not exceed 37 percent of the gross receipts for that game. When an authorized organization elects to deduct fees paid for the use and processing of credit card sales from the amount of gross revenues for that game awarded for prizes, the maximum amount of gross revenues that may be awarded for prizes shall not exceed 37 percent of the gross receipts for that game, less the amount of redirected fees paid for the use and processing of credit card sales. Every remote caller bingo game shall be played until a winner is declared. Progressive prizes are prohibited. The declared winner of a remote caller bingo game shall provide his or her identifying information and a mailing address to the onsite manager of the remote caller bingo game. Prizes shall be paid only by check; no cash prizes shall be paid. The organization conducting the remote caller bingo game may issue a check to the winner at the time of the game, or may send a check to the declared winner by United States Postal Service certified mail, return receipt requested. All prize money exceeding state and federal exemption limits on prize money shall be subject to income tax reporting and withholding requirements under applicable state and federal laws and regulations and those reports and withholding shall be forwarded, within 10 business days, to the appropriate state or federal agency on behalf of the winner. A report shall accompany the amount withheld identifying the person on whose behalf the money is being sent. Any game interrupted by a transmission failure, electrical outage, or act of God shall be considered void in the location that was affected. A refund for a canceled game or games shall be provided to the purchasers.

(q) (1) The California Gambling Control Commission shall regulate remote caller bingo, including, but not limited to, licensure and operation. The commission shall establish reasonable criteria regulating, and shall require the licensure of, the following:

(A) Any person who conducts a remote caller bingo game pursuant to this section, including, but not limited to, an employee, a person having fiduciary responsibility for a remote caller bingo game, a site manager, and a bingo caller.

(B) Any person who directly or indirectly manufactures, distributes, supplies, vends, leases, or otherwise provides supplies, devices, services, or other equipment designed for use in the

1 playing of a remote caller bingo game by any nonprofit
2 organization.

3 (C) Beginning January 31, 2009, or a later date as may be
4 established by the commission, all persons described in
5 subparagraph (A) or (B) may submit to the commission a letter of
6 intent to submit an application for licensure. The letter shall clearly
7 identify the principal applicant, all categories under which the
8 application will be filed, and the names of all those particular
9 individuals who are applying. Each charitable organization shall
10 provide an estimate of the frequency with which it plans to conduct
11 remote caller bingo operations, including the number of locations.
12 The letter of intent may be withdrawn or updated at any time.

13 (2) (A) The Department of Justice shall conduct background
14 investigations and conduct field enforcement as it relates to remote
15 caller bingo consistent with the Gambling Control Act (Chapter 5
16 commencing with Section 19800) of Division 8 of the Business
17 and Professions Code) and as specified in regulations promulgated
18 by the commission.

19 (B) Fees to cover background investigation costs shall be paid
20 and accounted for in accordance with Section 19867 of the
21 Business and Professions Code.

22 (3) (A) Every application for a license or approval shall be
23 accompanied by a nonrefundable fee, the amount of which shall
24 be adopted by the commission by regulation.

25 (B) Fees and revenue collected pursuant to this paragraph shall
26 be deposited in the California Bingo Fund, which is hereby created
27 in the State Treasury. The funds deposited in the California Bingo
28 Fund shall be available, upon appropriation by the Legislature, for
29 expenditure by the commission and the department exclusively
30 for the support of the commission and department in carrying out
31 their duties and responsibilities under this section and Section
32 326.5.

33 (C) A loan is hereby authorized from the Gambling Control
34 Fund to the California Bingo Fund on or after January 1, 2009, in
35 an amount of up to five hundred thousand dollars (\$500,000) to
36 fund operating, personnel, and other startup costs incurred by the
37 commission relating to this act. Funds from the California Bingo
38 Fund shall be available to the commission upon appropriation by
39 the Legislature in the annual Budget Act. The loan shall be subject
40 to all of the following conditions:

1 (i) The loan shall be repaid to the Gambling Control Fund as
2 soon as there is sufficient money in the California Bingo Fund to
3 repay the amount loaned, but no later than five years after the date
4 of the loan.

5 (ii) Interest on the loan shall be paid from the California Bingo
6 Fund at the rate accruing to moneys in the Pooled Money
7 Investment Account.

8 (iii) The terms and conditions of the loan are approved, prior
9 to the transfer of funds, by the Department of Finance pursuant to
10 appropriate fiscal standards.

11 The commission may assess and collect reasonable fees and
12 deposits as necessary to defray the costs of regulation and
13 oversight.

14 (r) The administrative, managerial, technical, financial, and
15 security personnel employed by an organization that conducts
16 remote caller bingo games shall apply for, obtain, and thereafter
17 maintain valid work permits, as defined in Section 19805 of the
18 Business and Professions Code.

19 (s) An organization that conducts remote caller bingo games
20 shall retain records in connection with the remote caller bingo
21 game for five years.

22 (t) (1) All equipment used for remote caller bingo shall be
23 approved in advance by the California Gambling Control
24 Commission pursuant to regulations adopted pursuant to
25 subdivision (r) of Section 19841 of the Business and Professions
26 Code.

27 (2) The California Gambling Control Commission shall monitor
28 operation of the transmission and other equipment used for remote
29 caller bingo, and monitor the game.

30 (u) (1) As used in this section, "remote caller bingo game"
31 means a game of bingo, as defined in subdivision (o) of Section
32 326.5, in which the numbers or symbols on randomly drawn plastic
33 balls are announced by a natural person present at the site at which
34 the live game is conducted, and the organization conducting the
35 bingo game uses audio and video technology to link any of its
36 in-state facilities for the purpose of transmitting the remote calling
37 of a live bingo game from a single location to multiple locations
38 owned, leased, or rented by that organization, or as described in
39 subdivision (o) of this section. The audio or video technology used
40 to link the facilities may include cable, Internet, satellite,

1 broadband, or telephone technology, or any other means of
2 electronic transmission that ensures the secure, accurate, and
3 simultaneous transmission of the announcement of numbers or
4 symbols in the game from the location at which the game is called
5 by a natural person to the remote location or locations at which
6 players may participate in the game. The drawing of each ball
7 bearing a number or symbol by the natural person calling the game
8 shall be visible to all players as the ball is drawn, including through
9 a simultaneous live video feed at remote locations at which players
10 may participate in the game.

11 (2) The caller in the live game must be licensed by the California
12 Gambling Control Commission. A game may be called by a
13 nonlicensed caller if the drawing of balls and calling of numbers
14 or symbols by that person is observed and personally supervised
15 by a licensed caller.

16 (3) Remote caller bingo games shall be played using traditional
17 paper or other tangible bingo cards and daubers, and shall not be
18 played by using electronic devices, except card-minding devices,
19 as described in paragraph (1) of subdivision (p) of Section 326.5.

20 (4) Prior to conducting a remote caller bingo game, the
21 organization that conducts remote caller bingo shall submit to the
22 commission the controls, methodology, and standards of game
23 play, which shall include, but not be limited to, the equipment used
24 to select bingo numbers and create or originate cards, control or
25 maintenance, distribution to participating locations, and distribution
26 to players. Those controls, methodologies, and standards shall be
27 subject to prior approval by the commission, provided that the
28 controls shall be deemed approved by the commission after 90
29 days from the date of submission unless disapproved.

30 (v) A location shall not be eligible to participate in a remote
31 caller bingo game if bingo games are conducted at that location
32 in violation of Section 326.5 or any regulation adopted by the
33 commission pursuant to Section 19841 of the Business and
34 Professions Code, including, but not limited to, a location at which
35 unlawful electronic devices are used.

36 (w) (1) The vendor of the equipment used in a remote caller
37 bingo game shall have its books and records audited at least
38 annually by an independent California certified public accountant
39 and shall submit the results of that audit to the California Gambling
40 Control Commission within 120 days after the close of the vendor's

1 fiscal year. In addition, the California Gambling Control
2 Commission may audit the books and records of the vendor at any
3 time.

4 (2) An authorized organization that conducts remote caller bingo
5 games shall provide copies of the records pertaining to those games
6 to the California Gambling Control Commission within 30 days
7 after the end of each calendar quarter. In addition, those records
8 shall be audited by an independent California certified public
9 accountant at least annually and copies of the audit reports shall
10 be provided to the California Gambling Control Commission within
11 120 days after the close of the organization's fiscal year. The audit
12 report shall account for the annual amount of fees paid to financial
13 institutions for the use and processing of credit card sales by the
14 authorized organization and the amount of fees for the use and
15 processing of credit card sales redirected from "overhead costs"
16 and deducted from the amount of gross revenues awarded for
17 prizes.

18 (3) The costs of the licensing and audits required by this section
19 shall be borne by the person or entity required to be licensed or
20 audited. The audit shall enumerate the receipts for remote caller
21 bingo, the prizes disbursed, the overhead costs, and the amount
22 retained by the nonprofit organization. The commission may audit
23 the books and records of an organization that conducts remote
24 caller bingo games at any time.

25 (4) If, during an audit, the commission identifies practices in
26 violation of this section, the license for the audited entity may be
27 suspended pending review and hearing before the commission for
28 a final determination.

29 (5) No audit required to be conducted by the commission shall
30 commence before January 1, 2010.

31 (x) (1) The provisions of this section are severable. If any
32 provision of this section or its application is held invalid, that
33 invalidity shall not affect other provisions or applications that can
34 be given effect without the invalid provision or application.

35 (2) Notwithstanding paragraph (1), if paragraph (1) or (3) of
36 subdivision (u), or the application of either of those provisions, is
37 held invalid, this entire section shall be invalid.

38 (y) The commission shall submit a report to the Legislature, on
39 or before January 1, 2012, on the fundraising effectiveness and

- 1 regulation of remote caller bingo, and other matters that are relevant
- 2 to the public interest regarding remote caller bingo.
- 3 (z) The following definitions apply for purposes of this section:
- 4 (1) "Commission" means the California Gambling Control
- 5 Commission.
- 6 (2) "Person" includes a natural person, corporation, limited
- 7 liability company, partnership, trust, joint venture, association, or
- 8 any other business organization.